

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

**Ex parte** LEONARD M. GREENE

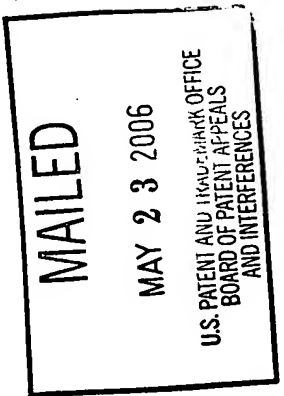
Application No. 10/659,334

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This Image File Wrapper (IFW) application was electronically received at the Board of Patent Appeals and Interferences on May 13, 2006. An in-depth review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

**EXAMINER'S ANSWER**

An examiner's answer was mailed on January 23, 2006. The contents under the heading "**(8) Evidence Relied Upon,**" contains a statement that "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal." The Examiner does rely on references that are applied in the rejections on appeal.



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Clarification on the written record is required pertaining to the this section of the Examiner's Answer.

Also, the examiner fails to set forth in the examiner's answer the current rejections on appeal under the "Grounds of Rejection" section of the Answer. **The Manual of Patenting Examining Procedure (MPEP)** § 1207.02(A)(9) which states that:

The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(9) *Grounds of Rejection*. For each ground of rejection maintained by the examiner and each new ground of rejection (if any), an explanation of the ground of rejection.

Correction is required.

Further review of the examiner's answer reveals that the typed or printed names of the conferees have not been furnished, only their initials. **The MPEP** § 1208 states that "below the primary examiner's signature, the word 'Conferees:' should be included, **followed by the typed or printed names of the other two appeal conferee participants**. These two appeal conference participants must place their initials next to their name. This will make the record clear that an appeal conference has been held." (Emphasis added). Correction is required pertaining to the missing conferee's printed names.

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**REPLY BRIEF**

The appellant filed a reply brief which was received by the USPTO on April 27, 2006. This document was not timely filed in accordance with 37 CFR § 41.41(a)(1), and § 41.41(c) which clearly state that the "[a]ppellant may file a reply brief to an examiner's answer **within two months from the date of the examiner's answer,**" and that "[e]xtensions of time under [37 CFR] § 1.136(a) . . . are not applicable." (Emphasis added). The Examiner is required to "notify appellant that the reply brief has not been considered and the reason for non-compliance. The examiner may use form paragraph 12.182 on Form PTOL-90 to notify the appellant [**see Manual of Patent Examining Procedure (MPEP)** § 1208]." The examiner has not complied with Section 1208. Clarification on the written record is required.

Accordingly, it is

**ORDERED** that the application is returned to the examiner:

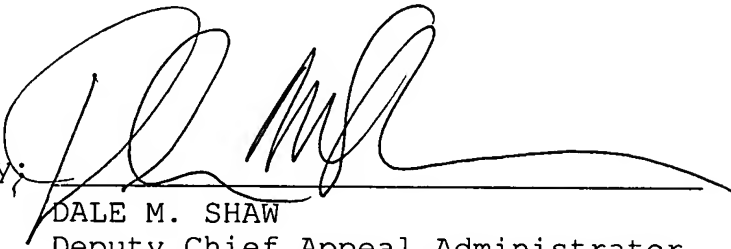
- 1) to submit a corrected examiner's answer that fully complies with **MPEP** § 1207.02(A)(8) and **MPEP** § 1207.02(A)(9),
- 2) to have the conferees' typed names supplied in the examiner's answer as noted above,

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3) to issue a response to the reply brief, which indicates the entry status, and

4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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DMS/hh